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September 28, 1995

Mr. William F. Caton
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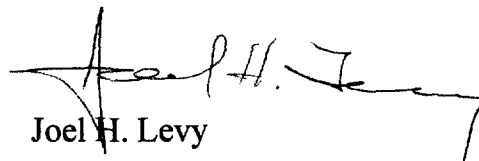
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Re: Docket No. 94-54 Ex Parte Presentation

Dear Mr. Caton

Enclosed herewith are two copies of a letter regarding interconnection and resale obligations pertaining to commercial mobile radio services in the above-referenced matter which was hand delivered to Commissioner Rachelle Chong and the parties listed therein on behalf of the National Wireless Resellers Association. Please associate this letter and the enclosure with Docket 94-54.

Sincerely yours


Joel H. Levy

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Commissioner Rachelle Chong
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: Interconnection and Resale Obligations Pertaining
to Commercial Mobile Radio Services, Docket No. 94-54
Ex Parte Presentation

Dear Commissioner Chong:

The National Wireless Resellers Association noted with interest your remarks at the 1995 Personal Communications Industry Association convention on the interconnection and resale obligations of commercial mobile radio service providers. While we agree with many of your views regarding the future of wireless communications, we must take issue with some of your comments concerning resale's role in CMRS.

With all due respect, several of your statements reflect a somewhat optimistic view of the future state of competition in wireless services, diminish the vital competitive role resale plays in the marketplace, and understate the importance of a strong resale program to broad participation by small business in CMRS. Equally significant, some of your comments appear to overstate the Commission's legal authority to permit CMRS providers to restrict the resale of their services.

Finally, your statement to the effect that the wireless market "is fully competitive" is fundamentally inaccurate relative to cellular service. The Commission, the Department of Justice, and the General Accounting Office, in reviewing competitive conditions in cellular, have all found the market to be less than "fully competitive." In fact, the Commission's recent report on competition in CMRS cited a DOJ finding regarding cellular service, that "cellular duopolists have substantial market power," and stated that the Commission's view has not been to the contrary.¹

While we applaud the Commission's efforts to create greater competition for cellular through the introduction of personal communications services, the fact is, government policies which attempt to create a multitude of new, facilities-based competitors in two-way, voice wireless services run counter to an economic fact-of-life -- the heavy capital requirements involved in building and managing these telecommunications networks. Despite the Commission's policy shift away from regulation and toward competition, economic reality means that the major wireless telecommunications services will remain a bastion of the same powerful corporations which

¹ Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, at 23-24, released August 18, 1995.

historically have dominated the industry.

Cellular, as you know, is controlled by a handful of the largest communications companies in the United States. The PCS market, regardless of who wins the remaining licenses, no doubt will be similarly concentrated. Indeed, the results of the first broadband PCS auctions ensure that the same corporate giants which today dominate cellular -- AT&T, Airtouch, Ameritech, BellSouth, Bell Atlantic-Nynex, GTE, SWB, US West, and Sprint -- will dominate the PCS industry as well. Of the 60 Major Trading Area PCS licenses covering the top 30 markets, 51 are now in the hands of these companies or consortiums of which they are members.

Such heavy market concentration makes small business participation in PCS, through license acquisition, a risky proposition at best. Even small business PCS licensees that belong to regional or national networks will be hard pressed to raise the necessary capital, produce the requisite economies of scale, and create the marketing prowess to compete effectively against their huge corporate rivals. And the continuing delays in the pending PCS auctions means the competitive environment is growing even more threatening for small business participants.

Under the right circumstances, however, resale presents a viable, alternative means of entry into the wireless industry for small businesses. Since there is no need to compete head-to-head with the likes of AT&T and the regional Bell operating companies in terms of financing, building, and managing entire networks, resellers can enter the wireless arena with a relatively small capital investment and concentrate their efforts on what they do best -- marketing. This combination of less upfront money and more focused operations makes resale a more attractive and potentially more successful business opportunity for many small firms than ownership of a PCS license.

As the long distance industry illustrates, a strong resale market is a "win-win" for both consumers and small business service providers. Although the long distance industry is not a monopoly, it is dominated by a select group of multinational corporations, much like cellular and PCS. In this market environment, a thriving resale component has given the vast majority of consumers access to discount rates and service innovations which otherwise would be available only to large-volume users. This is so for two reasons. First, because resellers traditionally cater to small and moderate-volume consumers, offering them attractive rates and services. Second, because reseller competition ultimately prods facilities-based carriers to offer similar rates and services.

Long distance resale also has provided tremendous business opportunities for small companies. According to some estimates, there are nearly 1,000 resellers in the interexchange market. While most of them are small to mid-size businesses with annual incomes below \$100 million, they account for nearly 20 percent of total industry revenues.

Much to the benefit of consumers, long distance resale serves the precise functions intended by the Commission when it developed its resale policies two decades ago: (1) restrain the tendency of carriers operating in concentrated markets, not necessarily monopoly markets, to implement

discriminatory pricing schemes; and (2) facilitate small business entry into capital-intensive industries. CMRS resale could someday have a similar competitive impact and afford small business the same magnitude of opportunity as its long distance counterpart. For this to occur, however, the Commission must not curtail the imposition of its resale policies on CMRS. On the contrary, the Commission must act aggressively to help create a more favorable business climate for wireless resale. It can do so by taking the following steps:

- (1) ***Prohibit any restrictions on resale in all areas of CMRS.*** There are no legitimate public policy reasons to restrict resale in any segment of CMRS. Conversely, prohibiting restrictions on resale will enhance competition by facilitating small business entry into CMRS. Unrestricted resale also will help licensees roll out services during the start up period and minimize instances of discriminatory pricing.
- (2) ***Mandate interconnection between CMRS licensees and resellers upon reasonable request.*** Of the three principle types of telephony resellers -- long distance, wireline local exchange, and wireless -- only wireless resellers have not been allowed to interconnect to carrier networks upon reasonable request. This complete denial of wireless reseller interconnection rights is harmful to consumers and resellers since it hinders the ability of wireless resellers to offer innovative pricing and services.
- (3) ***Implement number transferability for CMRS resellers.*** As the Commission itself noted in the Second Notice of Proposed Rule Making (Docket No. 94-54), number transferability (i.e., the ability to transfer blocks of numbers from one underlying carrier to another) would give CMRS resellers "leverage to obtain better service at lower prices." Lower wholesale prices will make CMRS resellers more competitive and ultimately lead to lower retail prices for consumers.
- (4) ***Create an atmosphere generally conducive to resale.*** One reason wireless resale has not enjoyed the growth of long distance resale is that the Commission's cellular resale policies are routinely ignored by carriers. Many cellular carriers, for example, when asked about resale, say they do not have a resale program -- a direct violation of the Commission's rules. Other carriers discourage resale by implementing discriminatory pricing policies, requiring ridiculously high deposits on phone numbers, or imposing draconian fraud provisions -- all violations of the Commission's rules. In short, carriers ignore the Commission's resale policies because they believe there is little chance the Commission will take any punitive action.

In a future largely free of government regulation, where a handful of resource-rich companies will dominate the wireless landscape, a healthy resale market will be vital in creating a more competitive wireless industry, better service and lower prices for consumers, and a viable means of entry for small business. A thriving CMRS resale market will only become a reality, however, when the Commission sends a clear signal that

it intends to make resale an important component of wireless services and that abuses of its resale policies will not be tolerated.

In addition to the persuasive public interest arguments for creating a strong CMRS resale market, the Communications Act gives the Commission scant flexibility in permitting restrictions on CMRS resale. As the Commission noted in its landmark 1976 *Resale and Shared Use* decision and numerous subsequent proceedings, restrictions on resale are "unjust and unreasonable" in violation of Section 201(b) and "unreasonably discriminatory " under Section 202(a) of the Act. Only in the narrowest instance, allowing facilities-based cellular carriers to prohibit resale of their services by competing facilities-based carriers following the prescribed build-out period, has the Commission ruled that resale restrictions did not violate the Act.

Thank you for your time. We will be glad to meet with you to discuss the issues summarized in this letter in greater detail. In meantime, if you or your staff have any questions or need additional information, please do not hesitate to contact us.

Sincerely,

A handwritten signature in dark ink, appearing to be 'D. Gusky' or similar, written in a cursive style.

David Gusky
Executive Director

cc: Chairman Reed Hundt
Commissioner James Quello
Commissioner Andrew Barrett
Commissioner Susan Ness
Regina Keeney, Chief, Wireless Bureau